

15 FAM 530

REQUIRED PROCEDURES FOR DISPOSAL OF REAL PROPERTY

(CT:OBO-1; 04-29-2005)
(Office of Origin: OBO)

15 FAM 531 PROCEDURES FOR PROPERTY SALES

(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)

Post must follow these procedures:

- (1) Arrange for two independent appraisals of the property by qualified appraisers (see 15 FAM 512.2 and 15 FAM 413);
- (2) Select the disposal method that will produce the best return to the U.S. Government:
 - (a) Advertising for competitive bids is the preferred method of sale. Instructions are given below. The Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) or the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS), will suggest language for advertising; the Area Management Division in the Operations and Maintenance Office of the Bureau of Overseas Buildings Operations (OBO/OM/AM) will authorize funds for Department of State properties;
 - (b) If a real estate broker will be used, post must send OBO/REPM/AQD or USAID/W a justification, including the terms and costs of such services, requesting approval. For Department of State properties, post may request an allotment of funds from OBO/REPM/AQD (see 15 FAM 512.2 and 15 FAM 413);
 - (c) If private negotiations are considered preferable, post may request authorization from OBO or USAID/W (M/OMS) by sending a recommendation and justification to OBO/REPM/AQD or USAID/W (M/OMS);

- (3) Upon execution of a Sales Contract, post must send appropriate documentation to OBO/REPM/AQD or USAID/W (M/OMS) including:
 - (a) The Sales Contract (see 15 FAM 417);
 - (b) Other signed documentation confirming the date of sale, completion of the sale, and amount of money in dollars and local currency agreed upon, if not listed in the Sales Contract;
 - (c) Form OF-158, General Receipt, indicating the total amount and the exchange rate on the date of deposit;
- (4) When title is transferred, post must send appropriate documentation as listed in 15 FAM 417 to OBO/REPM/AQD or USAID/W (M/OMS);
- (5) When proceeds of sales are received, post must process them in accordance with 15 FAM 514.

15 FAM 532 INSTRUCTIONS FOR INVITATION TO BID

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Posts should provide interested buyers with an invitation to bid. The invitation to bid must be approved by the Acquisitions and Disposals Division in the Real Estate and Program Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) for State or the regional legal adviser (RLA) for USAID missions, and should contain the information specified in 15 FAM Exhibit 515.2.
- b. The post must provide a summary of each legitimate bid to OBO/REPM/AQD for State or to the RLA for USAID with a recommendation as to which bid, if any, should be accepted.
- c. When a bid is accepted by OBO for State or RLA for USAID, post must notify all other bidders and return their earnest money deposits.
- d. Post and local attorney must complete title transfer to the successful bidder in accordance with the terms of the contract and local law. Prior to acceptance, any changes from the terms of the contract required by local law must be referred to OBO/REPM/AQD for State or to the RLA for USAID for approval.

15 FAM 533 PROCEDURES FOR PROPERTY EXCHANGES

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Post must follow these procedures:

- (1) When the Acquisitions and Disposals Division in the Real Estate and Program Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) or the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) authorizes negotiations leading to an exchange of properties, post must obtain independent appraisals of all the properties from two qualified appraisers (see 15 FAM 512.2 and 15 FAM 413);
- (2) When the relative values of the properties have been determined, and OBO or USAID/W (M/OMS) approval has been obtained, post may enter into contract negotiations, applying the following principles:
 - (a) If the exchange is a simple one, i.e., one property for another, the essential elements of the contract negotiations are to describe the properties to be exchanged, determine the amount of cash, if any, to be paid by one party to the other, and set the details of the title transfer;
 - (b) If the property to be acquired by the U.S. Government involves construction, either remodeling or new, OBO or USAID/W (M/OMS) must approve the plans. The construction details become part of the exchange contract;
- (3) When the terms of the proposed exchange have been negotiated and a contract has been drafted either by OBO, USAID/W (M/OMS), or post's local attorney, post must obtain approval of the draft contract from OBO for State or from the regional legal adviser (RLA) for USAID before signature. If construction on the property to be received by the U.S. Government is involved, the title will **not** be transferred until construction is complete and accepted by OBO or USAID/W (M/OMS);
- (4) Upon execution of the exchange contract, post must send appropriate documentation to the Real Property Management Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/RPM) or USAID/W (M/OMS) including:

- (a) The Exchange Contract;
 - (b) Other signed documentation confirming the date of exchange, completion of the exchange, and amount of money agreed upon, if any, in dollars and local currency, if not listed in the exchange contract; and
 - (c) Form OF-158, General Receipt, indicating the total amount and the exchange rate on the date of deposit;
- (5) When title is transferred, post must send appropriate documentation to OBO/REPM/AQD or USAID/W (M/OMS) for all properties (see also 15 FAM 417); and
- (6) Proceeds from an exchange must be processed in accordance with 15 FAM 514.

15 FAM 534 PROCEDURES FOR LEASE AND LICENSE AGREEMENTS

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. **Definitions:**

- (1) A **lease** is a contract conveying the right to occupy property to another for a specific period in consideration of rent or other compensation. Leases must be made in accordance with Department of State or USAID requirements, local laws, and market conditions. Leases create enforceable rights for the lessee, including the right to occupy the property during the stated duration of the lease period;
- (2) A **license** is an agreement that allows the occupation of property by another party and describes the terms under which the licensee may occupy the property without becoming a trespasser. It is intended to create no enforceable rights for the licensee and can be terminated at any time at the will of the licensor (owner).

b. **Restrictions:** An employee occupying U.S. Government-held quarters may not enter into any arrangement which would provide compensation to the employee for use of the quarters. No U.S. Government-owned/long-term leased (GO/LTL) property may be occupied or otherwise used by any non-U.S. Government individual or organization in the absence of a sublease or license established in accordance with these regulations.

c. **Transfers:** A memorandum of understanding normally governs the temporary transfer of GO/LTL real property from one agency to another.

- d. **Proposals:** Post must submit the following information to the Acquisitions and Disposals Division in the Real Estate and Program Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) or to the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS):
 - (1) Identification of the property and site, including property identification (PropID);
 - (2) Names of prospective tenant(s) and their rental offer(s);
 - (3) A statement comparing proposed rental rate with prevailing local rates;
 - (4) A recommendation as to which offer, if any, should be accepted;
 - (5) The reasons for leasing, if the post recommends a lease instead of a license;
 - (6) Information as to whether local law, in any way, expands the rights of the occupant beyond those granted by the terms of the proposed agreement.
- e. **Drafting the agreement:** A local attorney must be consulted prior to entering into negotiations at post (see 15 FAM 512.2 and 15 FAM 413). The purpose of this consultation is to determine whether local laws grant the tenant rights beyond those that the U.S. Government is willing to grant, as stated in the model lease or license (see 15 FAM Exhibit 534A and 15 FAM Exhibit 534B). If problems arise under local law, post must provide an explanation to OBO/REPM/AQD for State or to the regional legal adviser (RLA) for USAID, and suggest solutions that will accomplish the U.S. Government's aims. When OBO or the RLA (USAID) approves proposed changes to the model lease or license, post may proceed with negotiations. If the model lease or license poses no problems under local law and OBO or USAID/W (M/OMS) has approved, post may proceed with negotiations.
- f. **Inventory of furniture, furnishings, and equipment (FFA&E):** If U.S. Government-owned (GO) FFA&E are included, an inventory shall be a part of the agreement and reflect the condition of each item as good, fair, or poor.
- g. **Deposit:** If possible, a deposit of two months' rent should be obtained and held in escrow against possible damage to the property caused by the tenant. Escrow deposits shall be accounted for in a local deposit account (see 4 FAH-3 H-322.2).
- h. **Execution and renewal:** The execution of a license or lease shall be attended by the required formalities of the host country, including registration of the license or lease. The model lease (15 FAM Exhibit 515.4A) purposefully includes no language on renewal of the lease. A

lease renewal, if approved, can be handled by amendment.

- i. **Documentation:** Upon execution of lease, license, renewal, or termination, post must send one signed and/or certified copy of the agreement to OBO/REPM/AQD or USAID/W (M/OMS). Post shall retain the original. A termination notification must bear the number of the license or lease and it, or a subsequent document, shall report that all sums owed have been paid (see 15 FAM 417).

15 FAM 535 THROUGH 539 UNASSIGNED

15 FAM EXHIBIT 532 INVITATION TO BID

(CT:OBO-1; 04-29-2005)

The following are requirements of an invitation to bid on U.S. Government-owned (GO) real property abroad.

- (1) A brief, legally accurate description of the property is required.
- (2) Bids must be made in writing.
- (3) A cutoff date for the submission of bids is required.
- (4) All bids will continue irrevocably in force for 35 days from the closing date for such bids.
- (5) Each bid must be accompanied by earnest money in the form of a certified check payable to the Treasurer of the United States, in an amount not less than five per cent of the bid, unless the Bureau of Overseas Buildings Operations (OBO) for State or the regional legal adviser (RLA) for USAID approves an exception, which should be documented.
- (6) No bid will be accepted until first approved by the Department of State or the RLA (USAID); the U.S. Government reserves the right to reject any and all bids for any reason whatsoever.
- (7) After U.S. Government approval of the bid, a draft sales agreement must be signed by the purchaser.
NOTE: This contract must be drawn by a qualified local attorney in conjunction with the appropriate post and OBO or RLA (USAID) representatives. Post must employ a local legal expert to ensure adequate protection of U.S. interests under and in compliance with local law. Posts may request allotment of funds for attorney's fees from OBO.
- (8) All transaction taxes, registration, and legal fees shall be the responsibility of the purchaser, unless local law provides otherwise.
- (9) Unless local law requires otherwise, the U.S. Government will transfer title by means of a Quit Claim Deed (a deed without continuing U.S. Government warranty of title).
- (10) Upon payment in full of the purchase price, the U.S. Government will deliver to the purchaser the necessary title documents, without warranty of title, unless local law specifically requires warranty by the seller.

15 FAM EXHIBIT 534A MODEL LEASE FOR U.S. GOVERNMENT- OWNED PROPERTY

(CT:OBO-1; 04-29-2005)

LEASE between THE GOVERNMENT OF THE UNITED STATES OF AMERICA and

1. This lease made and entered into this ____ day of _____ in the year _____, by and between the Government of the United States of America, acting by ____ [Name] _____, ____ [Title] _____, hereinafter called the Lessor, and ____ [Name] _____, ____ [Title] _____, hereinafter called the Lessee:

WITNESSETH: The parties hereto, for the considerations hereinafter mentioned, agree as follows:

2. The Lessor, the owner of certain property in the city of _____ in the country of _____, described as ____ [Enter a complete description of the property] _____, hereinafter referred to as "the property," which is not currently needed for the current operations of the Lessor, does hereby lease to the said Lessee the above-described property, to have and to hold for the term beginning _____ and ending _____.

3. It is understood and agreed that, after ____ [State time period] ____ of this lease, either party shall be at liberty to terminate this lease upon giving notice in writing to the other party sixty days in advance of the termination date, without the Lessor having right to any payment other than for rental (or also for damages owing under other terms of this lease) to the date the Lessee surrenders the premises. Further, in the event the Lessee fails to fulfill any of the conditions of this lease, and where this lease specifically provides no other remedy for such failure, the Lessor is entitled either to terminate this lease without previous notice or at its option, to take any measures that it may deem necessary to establish the conditions contemplated by this agreement and at the entire expense of the Lessee.

4. The Lessee shall pay the Lessor for the premises rented at the rate of [State sum for each time period in U.S. Dollars], payable in [the local currency equivalent] at the prevailing rate of exchange on the day on which each payment is made. The first payment being due _____, and subsequent payments at the following times: _____.
5. The Lessee is prohibited from making any alterations to the property without the express prior written consent of the Lessor.
6. All maintenance and nonstructural repairs shall be made at the expense of the Lessee and, in the case of substituted materials or equipment of a different type or make, with the consent of the Lessor.
7. The Lessee (Lessor) undertakes to furnish heat to the property.
(**NOTE:** This undertaking would vary depending on heating facilities in the U.S. Government-owned premises. If heat is supplied by the Lessor, the consideration to be set forth in Article 4 should be adjusted accordingly.)
8. The Lessee shall bear the cost of all water, electricity, gas and other utilities served to the property.
9. The Lessee shall return the property in the same good condition in which it was received, usual wear-and-tear and damages beyond the Lessee's control excepted.
10. The Lessee agrees that the property shall not be used for any illegal or immoral purpose, nor for gambling, nor for the sale of alcoholic beverages. The Lessee further agrees to take into account in this connection the fact that the Government of the United States of America owns the property.
11. The Lessee undertakes to keep the property in a clean and tidy state, including upkeep of lawns and shrubs, and to maintain those sidewalks and approaches peculiarly within the Lessee's control in proper condition and free of debris, snow and ice, and to accept all responsibility in connection therewith, as well as to maintain properly all halls and stairways or other conveniences intended for the sole use of the Lessee, (its, his, her, their) agents and employees, and the public; the Lessee accepts full and sole responsibility for any claim arising in connection with damage sustained through the use of such halls, approaches, stairways, and conveniences.

12. Whenever the property or any essential part thereof shall be destroyed by fire, flood, storm, earthquake, war, civil disturbance or other casualty, this lease shall, in case of total destruction or on being rendered unfit for further tenancy, immediately terminate, and, in case of partial destruction or injury, shall terminate at the option of either Lessor or Lessee upon giving notice in writing to the other party within twenty days after such casualty, and no rent shall accrue to the Lessor after such termination. Should the Lessee elect to remain in the premises rendered partially untenable, a proportionate rebate or reduction of prevailing rental payments will be allowed.

13. Any stamp duties required for this lease shall be paid by the Lessee and the English version of this lease is to be preferred for the interpretation thereof.

IN WITNESS WHEREOF, the parties hereunto have affixed their hands and seals as of the date written above.

_____ [Name, Title and Address] _____ LESSOR

The United States of America, Acting By:

_____ [Name, Title and Address] _____ LESSEE

15 FAM EXHIBIT 534B MODEL LICENSE FOR U.S. GOVERNMENT- OWNED PROPERTY

(CT:OBO-1; 04-29-2005)

REVOCABLE LICENSE AGREEMENT between THE GOVERNMENT OF THE UNITED STATES OF AMERICA through

and

1. This license agreement made and entered into this _____ day of _____ in the year _____, by and between the United States of America, acting by _____ [Name] _____, _____ [Title] _____, hereinafter called the Licensor, and _____ [Name] _____, _____ [Title] _____, hereinafter called the Licensee:

WITNESSETH: The parties hereto, for the considerations hereinafter mentioned, agree as follows:

2. The Licensor, the owner of certain property in the city of _____ in the country of _____, described as _____ [Enter a complete description of the property] _____ hereinafter referred to as "the property," which is not currently needed for the current operations of the Licensor, does hereby license the said Licensee to use the property until advised by the Licensor that the property is needed by the Licensor by giving _____ days notice. Upon receipt of such notice, the Licensee shall vacate the property and remove all of (its, his, her, their) possessions therefrom within _____ days following receipt of notice to vacate.

3. In the event that the Licensee shall desire to discontinue the use of the property, the Licensee shall give the Licensor thirty days notice of such intention.

4. In payment for the use of the property, the Licensee shall pay the Licensor, so long as the Licensee shall use or occupy the property, [State sum for each time period in U.S. dollars], in advance, effective, _____ payable in _____ [Name of currency] _____, at the prevailing rate of exchange on the day on which each payment is made. The first payment being due _____, and subsequent

payments at the following times: _____. In the event the Licensee vacates the property before the expiration of a month for which advance payment has been made, pro rata proportion (or no portion) of the advance payment shall be returned to the Licensee.

5. The Licensee is prohibited from making any alterations to the property without the express prior written consent of the Licensor.

6. All maintenance and nonstructural repairs shall be made at the expense of the Licensee and, in the case of substituted materials or equipment of a different type or make, with the consent of the Licensor.

7. The Licensee (Licensor) undertakes to furnish heat to the property. (**NOTE:** This undertaking would vary depending on heating facilities in the U.S. Government-owned premises. If heat is supplied by the Licensor, the consideration to be set forth in Article 4 should be adjusted accordingly.)

8. The Licensee shall bear the cost of all water, electricity, gas and other utilities served to the property and shall pay all taxes and rates, and shall submit to the Licensor receipted bills for such taxes and rates.

9. The Licensee shall return the property in the same good condition in which it was received, usual wear and tear and damages beyond the Licensee's control excepted.

10. The Licensee agrees that the property shall not be used for any illegal or immoral purpose, nor for gambling, nor for the sale of alcoholic beverages. The Licensee further agrees to take into account in this connection the fact that the Government of the United States of America owns the property.

11. The Licensee undertakes to keep the property in a clean and tidy state, including upkeep of lawns and shrubs, and to maintain those sidewalks and approaches peculiarly within the Licensee's control in proper condition and free of debris, snow and ice, and to accept all responsibility in connection therewith, as well as to maintain properly all halls and stairways or other conveniences intended for the sole use of the Licensee, (its, his, her, their) agents and employees, and the public; the Licensee accepts full and sole responsibility for any claim arising in connection with damage sustained through the use of such halls, approaches, stairways, and conveniences.

12. Any stamp duties required for this license agreement shall be paid by the Licensee and the English version of this license agreement is to be preferred for the interpretation thereof.

IN WITNESS WHEREOF, the parties hereunto have affixed their hands and seals as of the date written above.

_____ [Name, Title and Address] _____ LICENSOR

The United States of America, Acting By:

_____ [Name, Title and Address] _____ LICENSEE